plaintiff and the third party are engaged in a common enterprise, *Payne* v. *C. R. I. & P. R. Co.*, 39 Iowa 523, and a distinction has sometimes been attempted to be made between riding in a public, and riding in a private carriage, but this latter idea is not generally sanctioned or heeded. *Mosterson* v. *N.Y.C.& H. R.R.Co.*,84 N.Y. 247; *Cuddy* v. *Horn*, 46 Mich. 596. In accord with the principal case are *Whitaker* v. *City of Helena*, 14 Mont. 124; *Omaha & Republican Valley R. Co.* v. *Talbot*, 48 Neb. 627; *Carlisle* v. *Sheldon*, 38 Vt. 440.

PRINCIPAL AND SURETY—CO-SURETIES DEFINED—CONTRIBUTION.—Several surety companies were bound by separate bonds on account of the same principal and to the same obligee. The bonds were all alike and each company limited its liability under them, in event of default on the part of the principal, to such proportion of the loss sustained by the obligee as the penalty named in the bond bore to total amount of bonds furnished to the obligee by the principal. The principal deposited collateral security with one of the surety companies to indemnify it against any loss which it might sustain on its bond. *Held*: The relationship of co-surety did not exist between the several companies and none of the other companies was entitled to any of the benefit of this security. *Assets Realization Co.* v. *American Bonding Co.* (Ohio 1913) 102 N. E. 719.

As a general rule sureties who undertake for the same principal and for the same debt are co-sureties although they are bound by separate instruments. *Deering* v. *Earl of Winchelsea*, 2 Bos. & Pul. 270; *Houck* v. *Graham*, 106 Ind. 195, 6 N. E. 594, 55 Am. St. Rep. 727; *Robinson* v. *Boyd*, 60 Ohio St. 57, 53 N. E. 494. The same rule has been applied in the case of surety companies, *National Surety Co.* v. *Di Marsico*, 105 N. Y. Sup. 272. But where the obligations are wholly distinct things, as a replevin bond and an appeal bond, though arising from the same principal indebtedness, the parties are not co-sureties. *Rosenbaum* v. *Goodman*, 78 Va. 121. In the principal case the court bases its decision entirely upon the provision in each bond limiting the liability of each company to its proportionate share of the total loss. This contract between the surety and the obligee curtails the latter's common law right to recover the entire amount of the loss from one surety and would seem to make contribution among the sureties unnecessary. The court holds that the right of contribution is destroyed by this provision and this, in its opinion, goes to the essence of the relation of co-suretyship; that the existence of the right of contribution is the test as to whether the parties are co-sureties, and there being no such right in this case all of the other rights of the sureties among themselves are absent. That the several companies assumed entirely separate and distinct obligations and no legal or equitable duty was owed by one to the other. There may be some doubt as to whether this result should follow from a contract entirely between the surety and the obligee, but the case is of interest in defining the rights of several sureties on such limited bonds.

PRINCIPAL AND SURETY—DISCHARGE OF SURETY—MISTAKE.—Several sureties executed a bond for the faithful performance of the terms of a lease by the principal. After the execution of the bond the name of one of the sure-

ties was withdrawn by the principal without the knowledge of the other sureties. The defendant then executed a separate instrument as surety for the same principal guaranteeing the payment of the aforesaid bond. He knew that the name of the surety had been withdrawn from the bond but did not know that it had been done without the consent of the other sureties. *Held,* That the other sureties on the bond were released, but the bond was not wholly void but was binding upon the principal, and that the defendant was liable on the guaranty since he was put upon inquiry from the knowledge which he had and should have ascertained the true facts. *Shepherd Land Co.* v. *Banigan* (R. I. 1913) 87 Atl. 531.

It is evident that the co-sureties on the bond who did not know of the withdrawal were released. *Smith* v. *United States,* 69 U. S. 219, 17 L. Ed. 788. But the question of the liability of the defendant who signed after the alteration is a different one, involving a question of mistake in the execution of an instrument rather than one of discharge of a surety. In the principal case there were two instruments involved. A similar question has arisen in several American cases in all of which, however, the parties had signed the same instrument. A surety who signs a bond in ignorance of the fact that the other sureties have already been released by an alteration of the bond without their knowledge is not bound, *Howe* v. *Peabody,* 2 Gray 556. The same was held where the release was by reason of the withdrawal of the name of a former surety. *State* v. *McGonigle,* 101 Mo. 353, 8 L. R. A. 735. In both of these cases the defendant was ignorant of the fact that there had been any alteration of the instrument, but otherwise knew what he was signing. The decision in the principal case is based upon the following cases, *State* v. *Van Pelt,* 1 Ind. 304 and *Mitchell* v. *Burton,* 39 Tenn. (3 Head.) 613. In these cases it was held that one who signs in the place of a surety whose name has been withdrawn, and with knowledge of this fact, is not relieved from liability on the instrument because he did not know that it had been done without the knowledge and consent of the other sureties on the instrument and that they were not liable with him as he had supposed. In the first of these cases the decision is put upon the ground that the mistake was as the legal consequences of the act and therefore did not affect the contract. This would not seem to be sound as the question of whether the other sureties had knowledge of the release is one of fact and not of law. The same reason would have applied to the two first cases cited. If the principal case is to be sustained it is upon the ground adopted in the Tennessee decision, constructive notice. There seems to be good reason to hold that from his knowledge of the fact that a surety's name had been withdrawn the defendant should be charged with notice of all the circumstances surrounding such withdrawal.

SALES—BONAFIDE PURCHASER—CONDITIONAL SALE—NOTICE OF CONDITION. —Action for conversion of machinery sold to a contractor, to be placed in an electric plant for defendant city, title being expressly reserved by vendor until payment. Vendor knew it was to be attached to the said realty. Defendant city disclaimed all knowledge that title was reserved. *Held,* in order to bind the city, it must have had actual notice of the reserved title, and its